IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6816 OF 2005

Shri Suresh Shriram Padhye. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Mr. R. N. Karche with Mr. S.S. Redis for the Petitioner.
Mr. P. P. Kakade, AGP for Respondent No.1.
Ms.Neeta P. Kemile for Respondent Nos.2 and 3.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

October 24, 2005.

P.C.

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. The Petitioner was appointed as a Pump Operator on 5th July 1977 by the Maharashtra Jeevan Pradhikaran. He came to be promoted to the post of Electrician in February 1988. On 23rd July 1997, the Petitioner was promoted as Junior Engineer (Electrical). On 13th May 2004, a notice to show cause was issued to the Petitioner to explain why his appointment as Junior Engineer

should not be cancelled. The ground set out in the notice was that the Certificate of Electrical Supervisor issued by the Industries and Labour Department of the State Government was not equivalent to the Diploma in Electrical Engineering and that hence, the appointment of the Petitioner to the post of Junior Engineer was not in accordance with the conditions of eligibility laid down in the Government Resolution dated 8th January 1975. The Petitioner submitted his reply to the notice on 20th May 2004.

3. By a communication dated 21st September 2005 of the Executive Engineer in the Ratnagiri Division of the Second Respondent, the Petitioner was informed of his reversion to the post of Electrician. The order of reversion records that the holding of a Degree or Diploma is a necessary qualification for promotion to the post of Junior Engineer under the Government Resolution dated 8th January 1975. The Certificate of Electrical Supervisor held by the Petitioner is not equivalent to a Diploma in Electrical Engineering. Hence, it has been found that the appointment of the Petitioner to the post of Junior Engineer was illegal. While reverting the Petitioner to the post of Electrician, it has been, however, directed that since the Petitioner had worked in the post

of Junior Engineer in the interregnum, the difference in pay would not be recovered.

4. The order of reversion has been challenged in these proceedings.

5. An affidavit in reply has been filed on behalf of the Second Respondent in which it has been stated that after the promotion of the Petitioner to the post of Junior Engineer in July 1997, it was noted by the Central Office of the Second Respondent that the Petitioner did not hold the requisite qualifications for the post of Junior Engineer (Electrical). Under the Recruitment Rules, a person must possess either a Degree or Diploma in Electrical Engineering in order to be eligible for appointment to the post of Junior Engineer (Electrical). The Petitioner did not possess either a degree or diploma. The Petitioner possesses a Certificate of Electrical Supervisor issued by the Licensing Board, Industries, Energy and Labour Department of the Government of Maharashtra. The Second Respondent sought the view of the Technical Education Board of the State Government as to whether the certificate held by the

Petitioner was equivalent to a degree or diploma in Electrical Engineering. On 24th November 1999, the Technical Education Board clarified that the certificate held by the Petitioner was not equivalent to a degree or diploma in Electrical Engineering. Consequently, a notice to show cause was issued to the Petitioner upon which the order of reversion came to be passed. Moreover, it has been submitted that the promotional channel from the post of Electrician is initially to the post of Shift Engineer followed by promotion to the post of Junior Engineer. The Petitioner never held the post of Shift Engineer and was directly promoted as Junior Engineer from the post of Electrician. Under the Recruitment Rules only those Shift Engineers who hold a degree or diploma in Electrical Engineering can be promoted as Junior Engineer. The Petitioner was, however, directly promoted from the post of Electrician to the post of Junior Engineer (Electrical) contrary to the Rules.

6. There is a Government Resolution dated 8th January 1975 which has laid down pay scales, qualifications and norms of eligibility in respect of various posts. For the post of Junior Engineer, the eligibility requirement is a degree or diploma in

Electrical Engineering. A person can alternatively be appointed by promotion from the post of Shift Engineer (Electrical) if he possesses a diploma in Electrical Engineering with a Certificate of the Licensing Board for Certification as Electrician. In the present case, it is not disputed on behalf of the Petitioner that the Petitioner does not possess either a degree or a diploma in Electrical Engineering. Ex-facie therefore, the Petitioner was not eligible for promotion to the post of Junior Engineer. The order of reversion cannot, therefore, be faulted.

7. The Petitioner was promoted to the post of Electrician in February 1988. The Second Respondent has in the affidavit in reply stated that the next available post in the promotional channel is that of Shift Engineer. The Government Resolution dated 8th January 1975 prescribes that in order to be eligible for appointment to the post of Shift Engineer, a person must have a degree or diploma in Electrical Engineering. In the alternative, a person can be promoted from the post of Electrician if he possesses a Certificate of the Licensing Board and has five years' standing in service as an Electrician and possesses adequate experience of erection with the special approval of the Competent Authority.

Prima facie it would appear that the Petitioner would have been eligible for being considered to the post of Shift Engineer. There is also the post of Electrical Supervisor and one of the channels for promotion to the aforesaid post is from Shift Engineer provided that a candidate has a good record and possesses a certificate of competency awarded by the Licensing Board of the Government of Maharashtra and has adequate experience of erection. Similarly, an Electrician who possesses a certificate of competency awarded by the Licensing Board and with five years' of service, a good record and adequate experience in erection is similarly eligible. We are of the view that though the order of reversion of the Petitioner from the post of Junior Engineer cannot be faulted, since the Petitioner did not fulfill the condition of eligibility for holding that post, the case of the Petitioner for promotion to the post of Shift Engineer and thereafter as an Electrical Supervisor should be evaluated by the Second Respondent by convening a review DPC. A review DPC shall accordingly be convened for considering the case of the Petitioner at the material point of time with effect from the date on which he fulfilled the requirement of five years' service as an Electrician and the other requirements spelt out in the GR dated 8th January 1975 for the post of Shift

Engineer. The case of the Petitioner for promotion to the post of Electrical Supervisor shall similarly be considered by the review DPC on the same basis.

8. This petition shall accordingly stand disposed of in the aforesaid terms. In the circumstances of the case, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)